

No. 12204

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

WALTER FIELDS and ADEL C. SMITH,

Appellants,

vs.

HARRIET V. FIELDS,

Appellee.

APPELLANTS' REPLY BRIEF.

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FILED

JUL 20 1949

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Introduction.

Counsel for appellees misconceive the controlling question on this appeal. The question is not one of waiver of community property right, but on the contrary is one where we contend no community property right would or could arise. The spouses separated in New York, a common law state, in the year 1907. No community property could arise at this point, it being a common law state. For more than 25 years thereafter Harriet V. Fields lived in New York and W. C. Fields lived in New York and Pennsylvania. No community property right could arise during these years. The only claim she had or could have during any of that period was the right of support.

The spouses in 1907 agreed and thereafter continued to agree as to the manner in which he should discharge his obligation of support to her. This agreement continued from the date of its inception to the date of his death in 1946. This being true, no community property right could arise. It is, therefore, not a case of waiver of an existing right, but is a case where the law of contract as well as the law of domicile prevents the arising of any community property claim. The community property right is one that vests and exists during coverture. It is not a right of succession. Such rights accrue on the death of a decedent and not before. Harriet V. Fields may have the rights of a widow in the estate of her deceased husband, but that is the extent of her claim. The right of succession does not generate a community property claim. Her rights are as a widow in his separate estate and not otherwise.

The Court below failed to observe this distinction and thereby fell into serious error. Counsel for appellee quote from his written opinion at pages 13-14 of their brief. This very quotation reveals error in the Court's thinking. Of the showing made in this record and found in the appendix to this brief the Court below said:

“* * * The statements in the widow's letters relating to receipts of moneys over a period of years (from 1914 to 1944), which are summarized in the digest of letters filed with the motions and as to which she was examined orally at the hearing, *are nothing more than acknowledgment of receipts of various sums of money.* Their tone is, at times, sarcastic and the answering letters of the deceased, to which the digest refers, are similar in spirit. On the whole, they are

of the same type as the letters which were before the court at the trial of the case. *They show, only, as did her testimony at the trial, that the wife, at various times, took, for her support, the amounts which the deceased, in his lifetime, gave her, increasing them or reducing them as he willed, she at times protesting, at other acquiescing.* THEY DO NOT TEND TO PROVE AN AGREEMENT TO ACCEPT THE WEEKLY PAYMENTS IN LIEU OF HER WIDOW'S RIGHT TO CLAIM PERSONAL PROPERTY FROM FIELD'S ESTATE."

That she under New York law would be entitled to a widow's share in his personal property and likewise under California law is not a disputed question here. But these are rights in his estate in the nature of succession rights based on the premise that the property in question in which she seeks recognition was and is decedent's separate estate, and not community property. Thus the court below failed to recognize the basic fact that under New York law no community property could exist.

The agreement between the spouses having been fully performed by him keeps this contract alive as long as he performs it. Admittedly he performed it until the day of his death. This agreement and its full performance is a barrier that cannot be hurdled so as to create community property. This is true because the Fourteenth Amendment would prevent any such action by the courts or Legislature of California. Therefore, the only question in this case is, Did W. C. Fields have an understanding or arrangement or agreement with Harriet V. Fields as to the manner in which he was to discharge his obligation of support to her?

Evidence of the Agreement.

Evidence of the agreement was ignored by the Court below presumably because it was not a comprehensive settlement of all community property rights. But when the arrangement was made no property had been accumulated by either of them and little or no income was being earned by him. The duty to support was all the obligation he had to her when the separation occurred. The payment for support was at all times from the day of separation to the date of his death a matter of mutual understanding and agreement between them. For the convenience of the Court the main part of the evidence is set up in Appendices A, B and C of this brief. How the Court below could say that there was no agreement as to the amount she would accept as support is beyond our understanding.

This agreement measured his full duty to her and satisfied her claim to his future earnings. She did not lose her right of succession as a widow it is true, but she did lose any right to claim community property rights during the marriage and prior to the death of the decedent.

Conclusion.

Counsel nowhere met the contention made by appellant. They discuss the question of waiver of community property right, but they do not discuss the contention that no community property right ever arose. The New York case, *In re Burridge's Estate*, 261 N. Y. 225, 185 N. E. 81 (Op. Br. p. 15), recognizes the character of agreements here shown and by implication at least holds that the

widow in such case has the right only given by New York law in the separate estate of her decedent husband. The Court in that case said:

“The parties here have not only agreed to live apart, but have determined the manner in which the husband shall meet his obligation to support his wife, and in return the wife has accepted the stipulated provision for her support in lieu of ‘all other claim and provision for her support’ as well as in lieu of her dower right. . . . An agreement of a wife that she shall accept in lieu of other provision for her support a sum fixed by agreement, to be paid while both parties live and the husband’s obligation to support continues, is fairly open to the construction that the wife still intends to retain such rights against the husband’s estate after his death as the law has conferred upon her.”

It is only a right in his estate that is left to her in a case like the one before the Court.

The right of succession may remain, but a community property right cannot exist.

We submit that the judgment in this case should be reversed because the insurance premium was paid from the separate estate of the decedent in which the wife had no interest.

Respectfully submitted,

JOHN W. PRESTON,

JOHN W. PRESTON, JR.,

By JOHN W. PRESTON,

Attorneys for Appellants.

APPENDIX A.

Exhibit 33.

[Rep. Tr. p. 228.]

“655 Funchel Rd.
Bel-Air Cal.
June 27, 38

“Dear Hattie:—

“Further re. our conversation of several days ago. Is this your understanding and agreement. You wish me to allow you seventy dollars per week for a period of, say ten or twelve weeks. During the stay of Claudes intended bride when your household expenses will naturally increase. Then you agree to accept Fifty dollars per week for a like period immediately following, after which we return to the sixty dollars per week arrangement again. Or if you prefer you can have the extra Ten dollars per week for the ten or twelve weeks in a lump sum. I want to help you, and I know neither of us want a misunderstanding.

“Drop me a line here and when I return from the Springs in a few days I'll arrange with the bank to make the change.

“I hope yourself and Claude are well. My best wishes to you both.

CLAUDE.”

APPENDIX B.

[Rep. Tr. Supp. pp. 22-46.]

Q. Now, Mrs. Field, have you reviewed these photostats of the correspondence that took place between you and Mr. Fields over the years? A. Yes, over a lifetime.

Q. Now, isn't it true that for the first period of your separation that you had a certain allowance each week? A. There was no separation ever.

Q. All right. What do you call it then?

The Court: After he left you.

The Witness: He left to go on the road. He left New York to go on the road.

The Court: What he means by "separation" is that you did not live as husband and wife?

The Witness: We didn't live under the same roof.

Q. By Mr. Preston: What is the date you fixed when you ceased to live together as husband and wife? A. I can't remember.

Q. Just the year, please. A. I can't remember.

Q. Don't you know about what year it was? A. No, our child—

The Court: Didn't you tell me it was sometime after the baby was born? I think you told me that.

The Witness: Yes, sir. He was about—I was trying to think—

The Court: He was three or four years old?

The Witness: The child was about three or three and a half years old.

Mr. Preston: I think she said five and a half.

Q. By Mr. Preston: Didn't you fix it as 1907? A. He went on the road then.

The Court: Whatever took place between you took place in 1907, whatever you call it, a separation or his going away. That took place and—

The Witness: He came in and out from the road.

Q. By Mr. Preston: Can't you tell us a little more definitely what date you would say you ceased to live together as man and wife? A. When Claude was about three and a half years old.

Q. That would make it about what year? He was born in 1904? A. Yes, sir.

Q. About 1907? A. Yes, sir.

The Court: That would be 1907.

Q. By Mr. Preston: Now, in one of these letters that you say you have seen, there is a statement under date of December 28th, 1914:

“The arrears in payments are all righted” by the payment of \$100.00.

What did you mean by that?

Mr. Herron: Just a moment. We think the witness should be shown the letter.

The Witness: I can answer that.

The Court: That is all right.

Mr. Preston: If she doesn't remember she may say so.

The Witness: I didn't say I couldn't remember. Mr. Fields would send me four weeks in advance at \$25.00 a week and that is what the \$100.00 would have meant.

Q. By Mr. Preston: That is four weeks in advance? A. Yes, sir.

Q. You expected \$25.00 a week, did you not? A. I didn't know what to expect. That is all I was allowed to have from him.

Q. Answer my question: "The arrears are all righted." That means you expected \$25.00 a week, does it not? A. According to what he said—until he advanced me again.

Q. Now then, I believe you have already testified that he never said anything to you about a home in Philadelphia. A. When I asked for a home in Philadelphia he would say yes, and then he would send me something later, but it was always conversation. He never produced a home.

Q. Well, you wrote him a letter, did you not, holding the matter in abeyance, on January 4th, 1915, or January 20th, 1915? Do you remember anything about that after seeing the correspondence here? A. I waited for years for an answer to that.

Q. Answer my question. Did you write the letter that is referred to here under date of January 20th, 1915, postponing acceptance or rejection of the offer in Philadelphia? A. Yes.

Q. For a home? A. Yes, sir; because the child hadn't finished school yet and I didn't want to take him out of school for a home. Then we were living in Brooklyn and I wanted to go to New York to get a little apartment.

Q. Now, there is another letter here dated October 1, 1915, which acknowledged receipt: "The weekly money up to date," and asking for an additional \$100.00 to move into a small flat and states: "We won't annoy you any more for anything truly." Did you see that letter? A. Yes, I saw that.

Q. What does the "weekly money up to date" refer to? A. \$25.00 a week. And I couldn't have gone into a place and paid—

Q. I am not asking for voluntary answers.

Mr. Herron: You asked what it referred to.

The Witness: I haven't finished. You interrupted me always.

Q. By Mr. Preston: I asked what it referred to.
A. Yes.

Q. Now, here is another letter on October 18th, 1915, which acknowledges receipt of—I can't tell whether it is fifty or thirty. A. I guess thirty.

Mr. Herron: Fifty.

Mr. Preston: Fifty dollars on the \$100.00 requested above and refers to renting a little flat. Do you remember getting that \$50.00? A. That \$50.00 was to be used over a period of two weeks, but I never got the \$100.00.

Q. On October 20th, 1915, you acknowledged receipt of \$50.00 "to date." Do you remember that? A. "To date"? Yes, because he would often fall back and I would have to remind him that he was still in arrears.

Q. Now, on May 23rd, 1917, you wrote him: "Our weekly remittance these last few weeks" not paid. Did you? A. You confuse me all the time.

The Court: Answer the question, Madam. He merely asked you if you wrote the letter. You will answer that yes or no and then if you want to explain it I will let you explain it. Answer the questions. You wrote a letter and he wants to know what you referred to.

Q. By Mr. Preston: What did you refer to? A. May I have that again, please?

Q. By Mr. Preston: The quotation I have is: "Our weekly remittance these last few weeks not paid." A. No. He would run behind very often and very often confuse me.

The Court: Are you referring to the amount?

Mr. Preston: How much did you expect as late as May 23rd, 1917?

The Witness: I was getting \$25.00 then.

Q. By Mr. Preston: On February 7th, 1922, you wrote: "Our weekly remittance received to date."

Mr. Herron: Do you have the letter?

Mr. Preston: I think I can find it.

Mr. Herron: I would like to show it to the witness and she will probably know what you are talking about.

Q. By Mr. Preston: Do you recall that letter, a letter of February 7th, 1922: "Our weekly remittance received to date"? A. Yes. Mr. Fields always expected me to answer when I got the money order from him.

Q. Well, you accepted the money in lieu of support, did you not? A. I had to.

Q. Well, answer my question. Did you? A. Yes, I did. I had to.

Q. On the 20th day of February, 1922, you were supposed to have written in substance this: "Received a check for \$70.00 which went right to the rent and the rest for part on the furniture bill," and you asked for a larger weekly remittance than \$30.00. Do you remember that? A. I can't say that I remember that one letter, but I wrote him many letters.

Q. What is your answer again?

Mr. Herron: She said, "I can't remember that letter, but I wrote him many letters."

The Witness: Of the same type for years and years.

Q. By Mr. Preston: Then, on November 17th, 1925, there is a letter that reads this way: "Thanks for the check for \$60.00. That leaves you \$20.00 in arrears from last week." What does that mean? A. Sometimes he wouldn't send me the full amount.

Q. In 1925 were you supposed to get \$60.00 a week? A. I can't remember that.

Q. Well, anyway the \$60.00 left you \$20.00 in arrears. Can you explain what the arrears referred to? A. I told you sometimes he would not send me the full amount that he promised and would make up for it at another time.

Q. Isn't it a fact that you knew at all times how much he had promised to give you? A. No, because he would sometimes send more and sometimes less.

Q. All right. Then explain this letter of February 5th, 1926. This is a letter set up in the affidavit: "Thank you for the check for \$65.00 this week. Undoubtedly you made a mistake in sending \$5.00 too much. However, it will keep until next week." What do you refer to there? A. Because he was very capable of trickery—very often.

Q. What? A. Mr. Fields was very capable of trickery very often and would try to see whether I would give him the money back—the \$5.00 back or when he was in arrears.

Q. What did you mean when you said it was \$5.00 too much? A. He must have sent \$5.00 too much.

Q. Too much for what? A. Too much of the money that he was sending me every week.

Q. Don't you understand that that \$60.00 was what you were supposed to receive?

Mr. Herron: What date is this, Judge?

Mr. Preston: February 5th, 1926.

The Witness: No, I was supposed to receive a great deal more because I never could meet my expenses with the child.

Q. By Mr. Preston: Now, this reads: "Thank you for the check for \$65.00 this week. Undoubtedly you made a mistake in sending \$5.00 too much. However, it will keep until next week." Now, doesn't that mean to you that you were expecting \$60.00 a week? A. Yes.

Q. And that he sent you \$5.00 too much? A. Yes. And previous to that, he was in arrears \$20.00.

Q. All right. Was this a time when you were supposed to get \$60.00 a week or more? A. I can't remember.

Q. Can't remember? A. No.

Q. Well, isn't it true that he made an agreement with you or had an understanding with you or told you, at least, that he was going to send you \$60.00 a week in the year 1925? A. There never was any agreement.

Q. I am not asking information about an agreement. I am asking you what he told you. A. He told me lots of things. I can't remember that one letter. There was a letter every week.

Q. Do you remember the Harriman Bank? A. Yes.

Q. Do you remember when he made arrangements with that bank for you? A. I don't remember, but I know of the time when the bank went in the disaster.

Q. What was the arrangement there? A. (No answer.)

Q. How much were you to get? A. I just don't remember.

Q. Wasn't it \$75.00 a week? A. Yes, I guess it was at that time.

Q. What—how long did it go at \$75.00 a week? A. Less than three years.

Q. And then what was it changed to? A. He went down to \$50.00, and I said I couldn't manage on that, so he raised me to \$60.00.

Q. Now, Mrs. Fields, on October 14th, 1926, you wrote: "Our weekly remittance received for which we thank you." How much was that? A. I don't remember that one day that I said that. I said that in numerous letters.

Q. What did you refer to when you said, "Weekly remittance received"? A. The weekly remittance was what he allowed me at that time. He changed. He went up and down later on.

Q. He did then allow you a certain amount which he changed up and down, is that right? A. That is the only way he could do.

Q. Answer my question yes or no. A. Yes.

Q. Now, on June 4th, 1927, you said this: "Check for \$75.00—." "Acknowledge receipt of check for \$75.00 and note your arrangement with Harriman Bank for future payments, which is agreeable to me and acceptable." Did you say that? A. I don't remember that one letter. I had to agree to anything in order to keep my rent paid.

Q. The question is, did you tell him that it was agreeable to you and acceptable to get \$75.00 a week from the Harriman Bank?

Mr. Herron: And the witness answered she didn't remember that letter. Now, if you want to show it to her why don't you show it to her?

Mr. Preston: Have you got it?

Mr. Bisbee: We have never seen the letter.

The Court: Go ahead. I think she has answered the question.

Mr. Preston: I didn't want to take up too much time to show her.

Q. By Mr. Preston: If that is one of your letters could you tell what that meant—what that would mean?

A. I would have to take what was given me.

Q. Doesn't that mean it was agreeable to you and acceptable to you to get \$75.00 a week? A. When I was paying for furniture and had rent to pay it had to be agreeable.

Q. There is nothing said about furniture or rent in there, is there? A. Well, we never went into detail in every letter. There was an understanding that I was paying for furniture and a piano for the child, and I had to have rent and he had to go to school.

Q. Didn't Mr. Fields write you a letter on the 29th day of March, 1932, and say: "Could you manage on \$50.00 a week until things look up?" Do you recall that? A. Yes.

Q. Well, did he send you \$50.00 a week instead of seventy-five after that? A. Yes, that is what he did.

Q. And later on, didn't he make that up? A. Yes, he made it up later.

Q. He made that up? A. Yes, I believe he did. When was that?

Q. Well, did you get this letter from him on May 5th, 1932: "Within the week I will make your allowance \$50.00 per week until things look up a bit," and "prospects are more effulgent," and "You are not going to suffer very long until you are back on \$75.00 again." Do you remember that letter? A. Yes, I do.

Q. Do you remember that? A. Yes, I believe I do.

Q. Don't you gather from that, Mrs. Fields, that the understanding with you was that you were to have \$75.00 a week? A. Yes, sir.

Q. And that he had cut you down to \$50.00, as you call it, and that he was telling you that he would put it back to \$75.00. A. Yes, but he never did.

Q. Well, that \$75.00 was agreeable to you, was it not? A. It had to be. I had no other source of money.

Q. Well, then, in 1932, on the 19th of May, the bank changed the checks from \$75.00 to \$50.00, isn't that right? A. Yes, sir.

Q. Well, didn't he make in about May of 1933, an arrangement with the Guarantee Trust Company to pay you so much a week? A. Yes.

Q. How much a week was that? A. Well, after the Harriman Bank went into disaster he changed to the other bank and then when I told him I couldn't get along on \$50.00 he then changed it to \$60.00, as I told you.

Q. And how many years did that go on? A. Until about 1946.

Q. The date of his death? A. Yes, sir.

Q. Well now, when he died you were still under the \$60.00 a week regulation or whatever we want to call it, is that right? A. No. He reduced me to \$40.00.

Q. When? A. I told you.

Q. November of 1946? A. Yes.

Q. Well, up to November 1946, from 1933 to that date, it was \$60.00 a week, is that right? A. Yes.

Q. And you accepted it? A. I had to.

Q. Did you protest? A. I protested, yes.

Q. You protested? What did you get? A. The same as always—excuses—exaggerations, untruths, denials.

Q. I see a letter here dated December 9th, 1934, in which you wrote: "Won't you please keep your promise and send me the rest of the cut you made?" What did you have reference to there? A. What was that date, please?

Q. The date? A. Yes.

Q. December 9th, 1934. A. 1934. I just meant the same as I did for years and years. I didn't know when he was going to cut me because there was no stipulated agreement in any way at any time and he cut me and he raised me as he wanted to.

Q. Didn't he promise to support you, Mrs. Fields? Didn't he promise to support you? A. He didn't promise. He just did in a small way.

Q. Didn't he tell you he was going to support you? A. He never said anything about support.

Q. Didn't you have a discussion with him at all in which he told you he was going to support you? A. He

never said anything about it. He knew he had to in a small way.

Q. When he left did he say anything about supporting you? A. Left when?

Q. Well, when he left the home—when you quit living together as man and wife? A. No. I just kept on getting \$25.00 or \$30.00 or \$35.00, and then down to \$25.00 again.

Q. Just kept on sending it all the time. A. He just kept on supporting his wife and child.

Q. Was there ever a time between the time you quit living together as man and wife to the time he died in which you didn't collect your support? A. Sometimes he let it run over into a month.

Q. But you would get it eventually? A. Eventually; yes, sir.

Q. He supported you during that entire time? A. Yes, sir.

Q. And you accepted it? A. I had to.

Q. Well, cut out the "had to." Did you accept it? A. Yes, because it came to the house in a letter in the form of a check.

Q. And when he wrote you on June 27th, 1938, and that letter is already in evidence here, in regard to the \$10.00 for the entertainment of the bride-to-be of your son, you saw that letter today and read it again, did you? A. No, I didn't see it today.

Q. Well, it reads as follows: "Is this your understanding and agreement you wish me to allow you \$70.00 per week for a period of say 10 or 12 weeks, during the stay of Claude's intended bride when your household

expenses will naturally increase? Then you agree to accept \$50.00 per week for a like period immediately following, after which we return to the \$60.00 per week arrangement again." Didn't you make that proposition to Mr. Fields? A. Yes, but I never answered his letter because it was so small and cheap.

Q. You misunderstand my question.

The Court: That was the letter about which she was examined in the trial.

Mr. Preston: But not on this phase of it, your Honor. It is the same letter, all right.

Q. By Mr. Preston: You made that proposition to him, did you not, that you would take \$10.00—if he would give you \$10.00 more than \$60.00 you would take \$10.00 less than \$60.00 to make it up? A. If I asked him for any additional—

Q. Please answer my question. Did you do that? Didn't you make that offer to him? A. Yes, sir.

Q. And didn't he agree to do it? A. He waited for my answer and I never answered him.

Q. You never answered that letter at all? A. No.

Q. You made him the proposition and he wrote you a letter? A. Yes, sir.

Q. And you never answered it? A. I didn't answer it.

Q. Well now, there is one more letter dated January 7th, 1944, from the Hotel Empire, New York City. You wrote him as follows, did you not: "I was surprised when they informed me at the bank that you were anxious, I know, for there is nothing in this world you would not do for me and there is nothing in this world I would not do for you, so we have gone through life doing nothing for

each other." Do you recall that? A. Yes, sir; I thought he would laugh at that.

Q. And on January 13th, 1944, six days later, he wrote you in substance as follows: "If you were surprised can you imagine my surprise when I read your letter and you said we had gone through life doing nothing for each other. Sixty smackers a week, year in and year out, for forty years, \$124,800 you consider nothing. Heigh-ho-Lackaday; surprises never cease." Did he write you that? A. Yes.

Q. Was there any more correspondence after that? A. Yes. I sent him a few cards and told him I had gone to Philadelphia to see family friends.

Q. Now, you were living in New York, were you not, from the time—1907, we will call it,—the time you ceased to live together as man and wife, until you left to come to California in 1936? A. Yes, sir.

Q. Well now, Mr. Fields, where did he claim his home to be during the time you ceased to live together as man and wife?

Mr. Herron: That doesn't have anything to do with the motion presently pending.

Mr. Preston: It shows the place—

The Court: You are not going into the question of domicile at the present time?

Mr. Preston: It is not for that purpose. It is only for the purpose of showing there was an arrangement under the jurisdiction of New York.

The Court: All right.

Q. By Mr. Preston: Where did Mr. Fields live at the time you separated? A. He lived in his home in California.

Q. 1907? A. Oh, in 1907?

Q. When you separated? A. I thought you said 1944.

The Court: No, he is going back to 1907, the time you separated.

Q. By Mr. Preston: At the time you separated? A. He jumped around so.

Q. What? A. I said "You jump around so."

The Court: He is going back to the beginning.

Q. By Mr. Preston: Go back to the time you separated in 1907, when Claude, Jr. was a child. A. Yes.

Q. Where did you live and where did he live? A. In 1907 he was in New York, I believe, at that time.

Q. How long did he stay in New York in your opinion? A. According to the contracts that he had a few weeks here and there around the city and in Brooklyn. Then he would go back on the road again to Canada and Buffalo.

Q. Well, you have stated in your papers in New York that he left for California in about 1928, is that right?

A. Yes, I believe it was 1928.

Q. At all times previous to 1928 then he was a resident of New York, is that your conclusion or your opinion?

A. I don't know what he called his home.

Mr. Bisbee: I suggest that is an improper question—what her opinion is.

The Court: She was not a resident of California, anyway, I think the rule in regard to what constitutes an agreement between husband and wife is the same whether

you go by the law of New York or otherwise. I notice in your memorandum you even cite a case of mine.

Mr. Preston: Yes, I did. That is all I want to ask this witness.

Q. By Mr. Herron: Mrs. Fields, with respect to a letter written March 29th, 1932, do you remember having written Mr. Fields in part as follows: "In answer to your question, could we manage on \$50.00 a week until things look up," did you reply: "Yes, I will try to do what I can to help you in your trouble. Need I tell you what it will mean in sacrifices to me? In view of your statement concerning your financial affairs just now I haven't very much choice either way, have I? It is really too unfortunate that you have these repeated attacks of gripe." Then did you also say: "Out of the many thousands you make weekly you call \$75.00 to me the lion's share. Certainly I will do what I can and as long as I can on \$50.00 a week to help you out in your trouble. This \$50.00 will have to cover rent, gas, electricity, telephone, ice, and the milk bill, food and clothing for two, until Claude is located and the inevitable incidentals." Did you so write? A. Yes, sir.

Mr. Preston: What date was that?

Mr. Herron: That is one of your letters which you disposed of with a line, but not those lines.

The Court: All right.

Q. By Mr. Herron: Now, Mrs. Fields, it is a fact, isn't it, that during all this period of time you accepted

what you got? If Mr. Fields wrote you that he couldn't give you \$70.00 you would take \$50.00, wouldn't you?

A. I had to.

Q. And then you would from time to time write him and beg him for more, and sometimes you would get it, but more often you would not, is that right? A. Positively.

Q. And that was all there was to it? A. Yes, sir.

Mr. Herron: That is all.

Mr. Preston: May it please the court, do you want to ask her any questions?

The Court: No.

APPENDIX C.

[Clk. Tr. pp. 68-74.]

In the District Court of the United States, in and for the Southern District of California, Central Division.

The Penn Mutual Life Insurance Company, a corporation, Complainant, vs. Walter Fields, *et al.*, Defendants. No. 7854-Y Civil.

DIGEST OF THE LETTERS WRITTEN BY MR. & MRS. FIELDS TO EACH OTHER.

The letters herein digested begin on December 28, 1914 and end December 12, 1945. There are a few letters and telegrams that bear no date. The letters are referred to herein by their respective numbers.

1.

Shows that on December 28, 1914, Mrs. Fields stated "the arrears (in payments) are all righted" by the payment of \$100.00.

2.

Shows offer on January 4, 1915, of Mr. Fields to supply a home to the wife and their son in Philadelphia.

3.

On January 20, 1915, Mrs. Fields wrote, postponing acceptance or action on offer of Philadelphia home.

5.

Mr. Fields agreed to pay railroad fares of wife and son to Cleveland. Again offers to get a home for them.

6.

Mrs. Fields, on October 1, 1913, acknowledges receipt of "the weekly money up to date. Asks for additional

\$100 to move into small flat" and states, "we won't annoy you any more for *anything truly.*"

7.

Mrs. Fields, on October 18, 1915, acknowledges receipt of \$50.00 on the \$100.00 requested in 6, *supra*, and again refers to renting a little flat.

8.

On October 20, 1915, Mrs. Fields acknowledges receipt of \$50.00 "to date."

10.

On July 29, 1916, she asked "your help of a little extra money each week to go to Atlantic City" to avoid some infectious disease prevalent in New York City.

11.

On May 23, 1917 she reminded him that "our weekly remittance these last few weeks" not paid.

14.

On February 7, 1922, she wrote "our weekly remittance received to date." Asked for additional money for rent, etc.

15.

On February 20, 1922, she wrote she had received "cheque" and "\$70 went right to the rent, the rest for part on furniture bill." Asks "for a larger weekly remittance than \$30."

17.

On November 17, 1925, she thanks him "for the cheque for \$60.00 (sixty) that leaves you twenty dollars in arrears from last week."

No.

On February 5, 1926, she wrote "Thank you for the cheque for \$65.00 (sixty five dollars) this week—, undoubtedly you made a mistake in sending five dollars too much,—however it will keep until next week."

18.

On October 14, 1926, she wrote "Our weekly remittance received, for which we thank you."

19.

On June 4, 1927, she acknowledged receipt of "cheque for seventy five dollars (\$75.00) and note your arrangement with Harriman Bank for future payments, which is agreeable to me, and acceptable."

20.

On December 4, 1928, she renewed request to make weekly payments larger, because of his increased earnings.

21.

On January 16, 1929, thanked him for New Years present. Explained poor state of health and renewed request for increased payments.

23.

On March 29, 1932, she referred to his question, "could we manage on fifty dollars per week until things look up." She reminded him of the sacrifices that would entail, increased expenses, etc.

24.

On May 5, 1932, he wrote that "within the week I will make your allowance fifty dollars per week until things look up a bit," that "prospects are more effulgent," and "you are not going to suffer very long until you are back on seventy-five again."

25.

On May 19, 1932, letter from Harriman Bank changing weekly check to her from \$75.00 to \$50.00.

28.

On March 28, 1933, she informed him she had heard from Guaranty Trust Co. that payment of \$50 per week would be made to her. Spoke of four payments not made by Harriman Bank, and of being destitute.

31.

On April 6, 1933, Hattie acknowledged receipt of his "cheque for two hundred, covering four weeks. Most of outstanding bills of the past four weeks are attended to."

34.

On June 19, 1934, she wrote, renewing "question of a life time, to give us a home."

35.

On December 9, 1934 she wrote "won't you please keep your promise and send me the rest of the cut you made."

(All of her foregoing letters were written from New York.)

36.

On August 9, 1935, she wrote from New Commodore Hotel, Los Angeles, about his illness.

39.

On February 15, 1936 W. C. Fields wrote Claude Fields, "Have just stopped story that for thirty-six years I have unfailingly remitted money to your mother."

40.

On June 27, 1938, he wrote her "Is this your understanding and agreement you wish me to allow you seventy dollars per week for a period of say ten or twelve weeks. During the stay of Claude's intended bride when your household expenses will naturally increase. Then you agree to accept fifty dollars per week for a like period immediately following, after which we return to the sixty dollars per week arrangement again."

41.

Lloyd Wright letter of February 24, 1938, re taxes.

43.

On March 29, 1939, she wrote in reference to his present of a coat and dress.

45.

Letter, April 8, 1939, from Alan A. Gray re taxes, and referring to separation agreement.

49.

July 8, 1942, she wrote asking "a favor of you" that he pay her railroad fare to New York and return for Claude's wedding.

50.

January 7, 1944, she wrote from Hotel Empire, New York City, "I was surprised, when they informed me at

the bank, that you had telegraphed my whereabouts. But you were anxious I know, for there is nothing in this world you would not do for me, and there is nothing in this world I would not do for you, so we have gone through life doing *nothing* for each other."

51.

To which he replied, on January 13, 1944, "If you were surprised, can you imagine my surprise when I read your letter and you said we had gone through life doing nothing for each other. Sixty smackers a week, year in and year out, for forty years (\$124,800.00)you consider nothing. Heigh-ho-lackaday, surprises never cease."

Respectfully submitted,

JOHN W. PRESTON

JOHN W. PRESTON, JR.

By JOHN W. PRESTON

Attorneys for Walter Fields and Adel C.
Smith, Defendants.